

WETLANDS COUNCIL

MINUTES

December 13, 2011

The Wetlands Council met on Tuesday, December 13, 2011 in Rooms 112, 113, & 114 at the Department of Environmental Services, 29 Hazen Drive, Concord, NH

Attendees: Chairman Chip Kimball, Councilors: Larry Ballin, Ryan Crosbie, Carol Henderson, James Kennedy, Seth Prescott, Russ St. Pierre, Susan Slack, Thomas Sloan, and David Thompson

Absentees: Councilor: Sharon Champagne

Also present were: Paula Scott, Appeals Clerk and Carolyn Guerdet, Council Clerk.

The regular Wetlands Council meeting was called to order by Chairman Kimball at 8:10 a.m. with introductions and a quorum present.

Susan Slack, the new OEP designee, was introduced and she shared her background before coming to OEP.

1. Approval of Minutes

- *Councilor Thompson made a motion to approve the November 8, 2011 minutes, second by Councilor Crosbie. Motion passed unanimously.*

2. Status of Appeals

Paula Scott, Appeals Clerk, reviewed the following appeals:

I. New Appeals

Docket No. 11-13 WtC – R. Michael Mayo, et. al.

Subject: 10/18/11 Denial of Request for Reconsideration

Presiding Officer: Not Assigned

Action needed: Appeal was filed timely on 11/17/11 but was insufficient. Sent insufficient appeal letter on 11/17/11 and received revised Petition for Appeal on 11/23/11. Receipt of revised appeal letter was sent 11/28/11. Council to act on Petition for Appeal at its January 10, 2012 meeting.

Docket No. 11-12 WtC – George R. and Denise Scholl

Subject: Denial on Reconsideration for Wetlands Permit #2011-00314

Presiding Officer: Not assigned

Action needed: Appeal appears to have been filed timely on 10/21/11. Attorney Hanna filed an appearance for the appellant on 10/21/11. Receipt of Appeal letter was issued on 10/21/11. Council to act on Appeal at today's meeting.

- *Motion to accept the Appeal by Councilor St. Pierre, second by Councilor Henderson. Motion passed unanimously.*

Docket No. 11-11 WtC – Robert M. Pinato

Subject: Rescission of Administrative Order No. 10-025 WD

Presiding Officer: Not assigned

Action needed: Appeal filed timely on 9/29/11. Received Motion to Summarily Dismiss Petition on 10/5/11. Received Objection to Motion to Summarily Dismiss on 10/14/11. Council voted to table this appeal until further action is taken on Docket No.10-20 WtC.

Docket No. 11-02 WtC – Norman Davis

Subject: 01/24/11 Decision on Reconsideration of File #2004-02929(granting amended Wetland application for Norman Davis)

Presiding Officer: Not assigned

Status: This appeal was recently discovered in the records of the prior appeals clerk. It appears that the Petition was timely filed, however, it was insufficient. On 11/22/11 a receipt of appeal letter was sent with an explanation about what appeared to have happened with the appeal and an insufficient appeal letter was also sent. On 11/30/11, a revised Petition for Appeal was received. On 12/7/11 the receipt of revised appeal was sent.

- ***Councilor Sloan made a motion to accept the Appeal, second by Councilor Thompson. Motion passed unanimously.***

Docket No. 10-30 WtC – Dana Belletete

Subject 08/27/10 Administrative Order No. 10-026 WD

Presiding Officer:

Status: This appeal was recently discovered in the records of the prior appeals clerk. It appears that the Petition was timely filed however it is insufficient. On 10/31/11 he was sent a receipt of appeal letter with the explanation about what appeared to have happened with the appeal. On 11/3/11 insufficient appeal letter was mailed with 30 days to correct the insufficiencies. 11/28/11 revised Petition for Appeal was received. Receipt of revised appeal letter was sent 12/7/11.

- ***Councilor Crosbie made a motion to accept the Appeal, second by Councilor Kennedy. Motion passed unanimously.***

II. Decision and Orders that need to be written, finalized and issued.

Docket No.: 08-04 WtC - Porter Trust

Subject: 12/12/07 Decision on Reconsideration, Wetlands File No. 2006-02705

Presiding Officer: Chip Kimball (assigned by AGO on January 5, 2011)

Status: On June 14, 2011, Council voted to deny LBC's Motion to Dismiss. Council also voted to continue deliberations until 60 days after reconsideration of issuance of new permit (permit issued on 4/6/11). Decision and order sent on 7/14/2011. Council requested a status report, specifically on the Reconsideration decision on 10/13/11. On 10/13/11 received via email response to request for status report. By agreement of the parties, the deadline for DES to rule on the Porter's Motion for Reconsideration is October 29, 2011. 11/11/11 Appellant filed an updated status report, the deadline by which NH DES is to rule on the Motion for Reconsideration has been extended by agreement of the parties to November 30, 2011.

Notification of abutters was discussed.

Docket No.: 09-07 WtC and 09-08 WtC - Lake Sunapee Protective Association (LSPA) and Town of Newbury

Subject: 1/7/09 Shoreland Impact Permit issued by DES to the NH Fish and Game for the Wild Goose Site in Newbury.

Presiding Officer: Larry Morse (assigned by AGO)

Recused: Larry Ballin, Carol Henderson

Status/Action: Hearings were held on October 12, 2010; October 26, 2010; November 9, 2010; and December 14, 2010. Deliberations were held on March 8 and April 12, 2011. Decision and Order to be prepared with 90 days (July 11, 2011). On 11/16/11 the AG assigned the Chairman as the Hearings Officer. Chairman Kimball has sent a draft to Larry Morse and Attorney English.

Docket No.: 09-25 WtC - Town of Hooksett

Subject: 5/11/09 Wetlands and Non-Site Specific Permit, Permit No. 2008-02016

Presiding Officer: Chip Kimball (assigned by AGO on October 27, 2010)

Recused: Larry Morse

Status: Rescheduled hearing for October 25, 2011 at 9 a.m., notice issued September 23, 2011.

Hearing was held on 10/25/11. Draft Order is before the Council today for consideration.

- ***Councilor Thompson made a motion to adopt the Decision and Order, second by Councilor Kennedy. Motion passed unanimously. Councilors Sloan and Slack abstained.***

Docket No.: 09-35 WtC – Town of Newbury

Subject: 9/18/09 Decision on Reconsideration, Wetlands File No. 2008-02781

Presiding Officer: Larry Morse (assigned by AGO)

Recused: Larry Ballin, Carol Henderson

Status/Action: Deliberations held on June 14, 2011. Decision and Order to be prepared with 90 days (Sept. 12, 2011). On 11/16/11 the AG assigned the Chairman as the Hearings Officer. Chairman Kimball has sent a draft to Larry Morse and Attorney English.

Docket No. 10-08 WtC – Robert Reich Appeal

Subject: 4/19/10 Decision on Reconsideration, Wetlands File No. 2009-02050

Presiding Officer: Chip Kimball (assigned by AGO on October 27, 2010.)

Status: Hearing was held on October 11, 2011. Draft Order to be adopted by the Council. Order was adopted by and issued on 11/8/11. 12/7/11 received Appellant's Motion for Reconsideration. Council needs to act on Motion at January 10, 2012 meeting.

III. Hearings or PHCs Pending

Docket No.: 07-09 WtC - Derry Conservation Commission

Subject: 4/24/07 Decision on Reconsideration Denial, Wetlands File No. 2006-00773

Presiding Officer: Seth Prescott (assigned by AGO)

Status: PHC was held on July 27, 2011, at 1:00 pm. Hearing scheduled for Dec. 13, 2011 at 9 a.m. per Pre-Hearing Order (PHO) issued on 8/8/11. Received Witness & Exhibit list from Applicant on 9/30/11. Received Appellant's Witness and Exhibit List and Motion to Enlarge Presentation Times on 10/7/11. Objection to Appellant's Witness and Exhibit List was filed on 10/5/11. Motion to Sequester Witnesses and Motion to Exclude from Appellants Allocated Time Used by DES Witnesses to Review the DES Wetlands Bureau file were filed on 10/11/11. 10/17/11 received Co-Appearance for DES and Applicants Objection to Motions to Sequester Witnesses and Exclude Time used by DES Witnesses. 10/21/11 Applicant filed Co-Appearance of Jed Callen. Hearing is December 13, 2011 at 9 a.m. Hearing is rescheduled to February 28, 2012 at 9:00 a.m., notice was issued on 12/8/11.

Docket No. 08 – 20 WtC - Anthony Pivaro

Subject: 02/19/08 Administrative Order No. 08-007 WD

Presiding Officer: David Conley (appointed by AG on 11/17/11)

Status: Received Motion for Reconsideration on 10/26/11, which included copies of insufficient appeal letter dated Mar. 4, 2008, and April 4, 2008 receipt of appeal letter. On Nov. 1, 2011, a letter mailed explaining the Motion for Reconsideration is insufficient and gave 30 days to correct the insufficiencies. Received the corrected filing of Motion for Reconsideration on 11/6/11. Council to vote on Motion. Council granted motion for reconsideration. PHC scheduled for December 12, 2011 at 1 p.m., notice sent on 11/16/11. PHO was issued on 12/12/11 with a hearing scheduled for May 8, 2012 at 9 a.m., notice given per PHO.

Docket No.: 08-53 WtC - Vintage Trust c/o Enthusiasts, Inc.

Subject: 8/7/08 Decision on Reconsideration Denial, Wetlands File No. 2006-01506

Presiding Officer: Ryan Crosbie

Status: Hearing scheduled for Oct 18, 2011 at 9 a.m. per PHO issued July 20, 2011. Assented-To Motion to Continue was filed on September 16, 2011. PO granted Motion to Continue for 60 days on September 30, 2011. Will set a hearing date for February 28, 2011 at 9 a.m. Notice was sent October 18, 2011. December 7, 2011 Appellant withdrew the appeal.

Docket No. 09-36 WtC – Brendan and Dana Keegan

Subject: Administrative Order No. 09-22 WD dated April 6, 2009

Presiding Officer: Chip Kimball (assigned on 10/31/11)

Status: Per DES we actually need to schedule a hearing, as PHC was already held. We will need a new Presiding Officer. A PHC scheduled for November 28, 2011, notice issued on 10/19/11. November 29, 2011 received Motion to Continue Pre-hearing conference. Motion was granted and PHC was rescheduled to December 16, 2011 at 9 a.m., notice was issued Nov. 30, 2011.

Docket No. 10-04 WtC – Thomas J. Murray Appeal

Subject: 12/28/09 Denial of Application, Wetlands File No. 2007-00187

Presiding Officer: Chip Kimball (assigned by AGO on October 27, 2010)

Status: The hearing is rescheduled for January 24, 2012 at 9 a.m., notice sent September 21, 2011.

Docket No. 10-10 WtC – Donald Lee

Subject: 5/23/10 Decision on Reconsideration, Wetlands File No. 2008-01253

Presiding Officer: Chip Kimball (assigned by AGO on January 26, 2011)

Status: Hearing scheduled for Jan. 10, 2012 per notice of PHO issued on 8/31/11. Received Suggestion of Bankruptcy on December 5, 2011. On 12/6/11 received Withdrawal of Appearance from Appellant's attorney and issued Order for Continuance. Appeal is Stayed due to filing in Bankruptcy Court

Docket No. 10-14 WtC – Akwa Marina Yacht Club

Subject: 6/11/10 Decision on Reconsideration, Wetlands File No. 2009-01047

Presiding Officer: Chip Kimball (assigned by AGO on January 26, 2011) Recused himself from being PO, Larry Ballin was assigned 8/19/11.

Status: PHO issued on July 27, 2011, hearing scheduled for Nov. 8, 2011 at 9 a.m. Oct. 25, 2011 Appellant filed Witness & Exhibit List. October 26, 2011 DES filed Witness & Exhibit List. On Nov. 2, 2011, received DES Addendum to the Witness & Exhibit List. 11/07/11 Assented-To Motion to Continue was filed. Motion to Continue was granted verbally on 11/7/11 and PO will have written ruling out within a few days. Written ruling on Motion to Continue was issued on November 8, 2011. 11/14/11 received Supplement to Appeal. Need to send new hearing date Notice for April 24, 2012.

Docket No. 10-20 WtC – Robert Pinato

Subject: August 19, 2010 Administrative Order, Administrative Order No. 10-025 WD

Presiding Officer: Ryan Crosbie

Status: A hearing is scheduled for October 25, 2011, at 9:00 am. Amendment to Petition for Appeal rec'd June 30, 2011. Motion to Continue was filed 8/29/11. Objection to Motion to Continue was filed 8/30/11. Reply to Objection to Motion to Continue filed 9/1/11. Motion to Dismiss was filed on Sept. 13, 2011. PO to issue decision and order on Motion to Dismiss. Ruling on Motion to Dismiss was issued Sept. 28th – Motion was granted. Received Motion for Reconsideration on 9/29/11. Objection to Motion for Reconsideration was filed on 10/5/11. PO issued ruling on Motion for Reconsideration on Nov. 2, 2011, which was granted. Council discussed/deliberated Reconsideration on 11/8/11. Discussion resulted in Council's belief that this is a matter of law and therefore the PO will decide. Interim Ruling on Reconsideration was issued on 12/1/11, staying the Council's decision on Reconsideration until the legal & venue considerations are defined. Parties are to provide the Council with the Superior Court Decision within 5 days of issuance.

Docket No. 10-23 WtC – Charles and Patricia Sem

Subject: Administrative Order No. 10-033 WD dated September 21, 2010

Presiding Officer: Ryan Crosbie

Status: PHC rescheduled to Sept 21, 2011 at 9:00 a.m. Notice sent August 4, 2011. 9/21/11 received appearance notice from Linda Magoon for DES. Hearing is scheduled for March 13, 2012 at 9 a.m. per PHO issued on September 21, 2011. Received withdrawal of appeal on November 7, 2011.

Docket No. 10-29 WtC – Constance Klefos Trust

Subject: 7/14/10 Denial of Request for Reconsideration of issued permit

Presiding Officer: David Conley (AG assigned on 10/31/11)

Status: Insufficient Appeal-letter sent September 8, 2011. Received revised appeal on 10/7/11. Appeal accepted on 10/11/11, notice issued on 10/18/11. Oct. 27, 2011 Applicant filed Motion to Summarily Dismiss Appeal. 11/3/11 Appellant filed Objection & Answer to the Motion to Summarily Dismiss. Order on Motion to Summarily Dismiss was issued on 12/9/11 and mailed on 12/13/11. PHC will be scheduled.

Docket No. 11-03 WtC – Joseph and Patricia DeVelis

Subject: 1/25/11 Administrative Order No. 11-002 WD

Presiding Officer: Ryan Crosbie (assigned by AGO on May 2, 2011)

Status: PHO issued 8/1/11 with Hearing scheduled for November 22, 2011 at 9:00 a.m. 10/24/11 received Assented-To Motion to Extend Time to File Witness & Exhibit Lists. 10/31/11 received Assented-To Motion to Modify Pre-hearing Order. Rulings on Motion to Extend Time & Motion to Modify PHO were issued on Nov. 2, 2011 and mailed on Nov. 3, 2011. With new hearing date set for March 13, 2012 at 9 a.m.

Docket No. 11-06 WtC – John and Sharon Graham

Subject: April 11, 2011 Appeal of Administrative Order No. 11-014 WD

Presiding Officer: Larry Ballin (assigned by AG on 8/1/11)

Status: Council accepted the appeal letter, notice was sent on July 22, 2011. PHC scheduled for November 7, 2011 at 9 a.m., notice sent on Oct. 17, 2011. PHO was issued on Nov. 7, 2011 with 2nd PHC scheduled for Feb. 15, 2012.

Docket No. 11-07 WtC – Clinton and Cynthia Johnson

Subject: 4/27/11 Shoreland Impact Permit No. 2011-00115

Presiding Officer: Chip Kimball (assigned by AG on 8/1/11)

Status: PHC was held and PHO was issued on September 20, 2011. Hearing scheduled for February 14, 2012 at 9 a.m., notice given with PHO. Oct. 12, 2011 Appellant filed request of Information from DES. On Oct. 13, 2011, received Applicant's Request for Information from Collis Adams & Jason Aube. Oct. 21, 2011 received Motion to Reconsider PHO or in the Alternative, to Modify the PHO to Permit Filing of an Amended Petition. On 10/24/11 received Partial Objection to Appellant's Motion to

Reconsider PHO & Modify the PHO as well as Reply to Appellants' Request for Information. 10/26/11 received Appellants' List of Witnesses and Exhibits and on 10/27/11 received Applicant's list of Witnesses & Exhibits. 11/1/11 received Motion to Compel Exchange of Information. 11/02/11 Appellant filed a correction to the Motion to Compel. 11/7/11 received Applicant's Objection to Appellants' Motion to Compel. PO to act on motion and objections. Ruling on Motion to Reconsider PHO and Expanded Ruling on Motion to Strike was issued on 11/9/11. Nov. 14, 2011 issued Ruling on Motion to Compel. Received Appellants' Objection to Evidence on 11/14/11. On 11/15/11 received Applicant's Response to Appellants' Objection. Issued Ruling on Witness and Exhibit Lists on 12/7/11.

Docket No. 11-09 WtC – Thomas Morrissey and Margaret Russell, et al

Subject: 1/1/11 Wetlands Permit #2009-01574, Town of Lyme

Presiding Officer: Chip Kimball (Assigned by AG on 9/16/11)

Recused: James Kennedy

Status: Nov. 27, 2011 Ruling was issued on Request to stay, which was mailed on 9/28/11. PHC scheduled for 10/26/11 at 11 a.m., notice issued on 9/29/11. Received Collis Adams' Appearance on 10/26/11. 10/26/11 received Appellant's and Applicant's PHC submissions. Hearing schedule for March 27, 2012 at 8 a.m., notice was given per the PHO on Oct. 26, 2011. Received on 12/12/11 per PHO the Supreme Court's December 8, 2011, Decision in Thomas Morrissey et al vs. Town of Lyme. NHDES and NH F & G.

IV. Inactive/Status Letter or Pending Settlement/Withdrawal

Docket No.: 08-55 WtC - Tracy Middleton Revocable Trust of 1992

Subject: 9/12/08 Reconsideration Denial, Wetlands File No. 2002-2087

Presiding Officer: Chip Kimball (assigned by AG on 8/1/11)

Status: A PHC was held on 10/26/11. Appellant received compliance order from DES. Parties to work on settlement agreement over fines. Appellant will withdraw appeal once settlement agreement is finalized. Sent status request on Nov. 28, 2011. On Nov. 29, 2011, received fully-executed Settlement Agreement from DES December 9, 2011 Appellant withdrew appeal.

Docket No.: 09-01 WtC - Kevin Price d/b/a Ossipee Lake Marina

Subject: 12/9/08 Administrative Order

Presiding Officer: Larry Morse (assigned by AGO on October 27, 2010)\

Recused: Susan Slack

Status: The appeal has been tentatively withdrawn, by letter dated March 7, 2011, pending completion of a settlement agreement between the parties. Status request issued 7/15/11 w/ 30 days to respond. Rec'd Status report 8/11/11-within 30 days parties will execute formal settlement and file with the Council. Paula has a call into the appellant's attorney to see where they are with the settlement. Received email from Attorney Roth, they are still working on a settlement agreement and we should be able to close this appeal within 2 to 3 weeks. Received Joint Motion to Approve Settlement Agreement and to Dismiss Appeal on November 18, 2011.

- ***Councilor Sloan made a Motion to grant the Joint Motion to Approve the Settlement Agreement, second by Councilor Thompson. Motion passed unanimously.***

Docket No.: 09-21 WtC - John Penaskovic

Subject: 4/17/09 Administrative Order, Administrative Order No. 09-041 WD

Recused: Larry Morse

Status: Appeal has been stayed until the agreement of July 1, 2010 is complete. Status request letter to be sent in September 2011. Received status report on 10/3/11. Appellant wants this appeal to remain open until "Gary Goodspeed completes his portion of the work agreed upon in the restoration

plan agreement dated July 1, 2010.” John will withdraw this appeal when Mr. Goodspeed receives a letter of compliance and a release of recordation.

V. Misc.

3. Old Business

4. New Business

Public Input: None

Chairman Kimball reported on a joint Council Chairmen’s meeting that was held November 18th. Public input was suggested at council meetings to address why citizens complain to the legislature and not to the commissioner.

Discussed were:

- complaints about the department
- the website, making it more user friendly.
- vacant agency seats and other vacant seats on the councils
- how to manage multi-jurisdictional issues
- access to prior decisions
- need to develop consistency with the correct statute for the year

A draft of one set of rules for all councils is being worked on.

6. Next Meeting –

Next regular meeting will be Tuesday, January 10, 2012 beginning at 9 a.m. No hearing.

7. Adjournment

- ***Councilor Ballin made a motion to adjourn, second by Councilor Henderson. Motion passed unanimously.***

Meeting adjourned at 9:10 a.m.